IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1381 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVSING JASHWANTSINHJI RATHOD - Petitioner(s)
Versus
DIRECTOR, SOCIAL WELFARE DEPTT & 1 - Respondent(s)

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Appearance :
MR KANUBHAI I PATEL for Petitioner(s) : 1,
MS MANISHA L. SHAH, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has prayed for a direction to pay pension and gratuity to the petitioner considering his length of service from 1962

to 31.8.99 and also to release all other service benefits on the basis of the said period of length of service.

2. The petitioner was working as a Guard with respondent No.1 at Beggars Gruh. He joined service in the year 1962. He tendered his resignation on 24.11.73. He thereafter did not discharge his active duties. Contending that there was no reply from respondent No.1 and that his resignation was not accepted, he filed Special Civil Application No.5375 of 1991. The said petition came to be disposed of by order dated 6.12.91. The learned single Judge recorded the contention of the petitioner that respondent should permit the petitioner to resume duty as fresh appointment as a Guard. The petitioner had also made a statement that he was ready and willing to forgo all rights of past service if he is given fresh appointment as a Guard. The statement of the learned advocate for the petitioner in this regard was also recorded. The learned Judge therefore, considering the fact that though the petitioner had tendered resignation on 29.11.73, the same was not accepted by the Department and thereafter taking into consideration the request of the petitioner for being permitted to resume duty,

provided that though the declaration that the petitioner continues in service cannot be granted, since the petitioner has limited his claim and prayed that the respondents be directed to permit the petitioner to resume duty as fresh appointment as a Guard, directed that he should be given fresh appointment at Odhav or anywhere else. To the above limited extent, the petition was allowed. It was made clear that the petitioner would not be entitled to backwages for the past service or any other benefits of his past service.

3. The petitioner has now filed the present petition seeking continuity of service and for counting his entire past service from 1962 to 31.8.99 when he actually retired from service for all purposes including pensionary and other benefits.

4. For obvious reasons, the request of the petitioner cannot be accepted. Firstly, this Court while granting prayer of the petitioner in the earlier round of litigation by the order dated 6.12.91 had made abundantly clear that the petitioner will not be entitled to receive any benefits of his past service either in the form of backwages or any other benefits. In fact, learned advocate for the petitioner had stated

before the Court that the petitioner does not insist for any benefit for the past service. This Court had in terms found that after 18 years of gap, the petitioner cannot claim continuity in service or declaration that he continues in service. In that view of the matter, there is no scope for reopening the issues already closed by this Court in earlier round of litigation. The prayer of the petitioner is unsustainable and unacceptable. Solely on the ground that the petitioner is a retired employee, I refrain from passing order of cost against him. The petition is therefore rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)